



STATE OF WASHINGTON  
**WASHINGTON STATE BOARD OF HEALTH**

*PO Box 47990 • Olympia, Washington 98504-7990*

April 12, 2006

**TO:** Washington State Board of Health Members

**FROM:** Craig McLaughlin, Executive Director

**SUBJECT: RULE MAKING PETITIONS RECEIVED IN MARCH 2006**

**Background and Summary**

In March 2006, two similar requests for rule making were sent to Secretary Mary Selecky—one from ten legislators including Representative Eickmeyer, chair of the Select Committee on Hood Canal, and one from Lieutenant Governor Brad Owen (both are attached). They asked the Department of Health (DOH) to examine new technologies that claim to rehabilitate failing septic systems and reduce nitrogen output, and then develop rules for permitting of such devices statewide. The Department responded by forwarding the requests to the State Board of Health as petitions for rule making under RCW 34.05.330 (see DOH responses attached). The Department also promised in its letters to explore a more timely solution to getting such devices approved outside of the rule making process.

The petitions address biological treatment systems, and specifically mention a proprietary device called Pirana-ABG, which facilitates the multiplication of beneficial bacteria. However, not all devices marketed in Washington for such purposes are biological. Others are based on chemical or mechanical technologies. Maryanne Guichard, Director of the Office of Environmental Health and Safety, is here to answer questions about septic system remediation technologies and communicate DOH's recommendation that the Board begin developing rules for permitting of these technologies.

The Board received another letter in March that I have treated as a petition for rule making. In it, Jackie Szikszoy Ramels of Seattle refers to a large-scale criminal case in New York involving the illegal harvesting of human tissues sold for medical purposes using falsified records. The tissues were sold without being tested for infectious diseases. The attached letter requests that the Board require health care providers to notify all recipients of illegally harvested human tissue. Presumably, such a requirement would have to take the form of a rule to be binding. The Board does not have authority to regulate the practice of medicine except in specific areas, so the part of her request that appears to be a petition for rule making will have to be denied.

Her letter requests additional actions by the Board. Washington State law (RCW 68.50.610) makes it a felony to sell or buy human tissue for medical uses that has been taken from a dead person. The Board does not have authority or capacity to engage in other activities she has requested, such as conducting an investigation or maintain a registry of implant recipients. The Board also does not have a ready

vehicle for further publicizing an event that has already garnered extensive national media attention. The Board may use part of this time on the agenda to discuss whether it wants to play an advocacy role on this issue, as requested by Ms. Ramels.

Board Policy 2005-01 guides the handling of petitions for rule making (attached). In most instances, the Board's executive director makes a recommendation to the Board chair on how to respond. The executive director has a duty to notify the Board of the request at the next meeting or through other means. The chair is authorized to respond without further Board action, but may choose to bring a request to the Board for a vote. Board members can also call for a vote.

I have consulted with the chair on all three letters and she has requested a Board vote on the on-site remediation requests. My recommendation is that we concur with the Department's recommendation. I am also proposing to draft a letter for the chair's signature denying Ms. Ramel's request that the Board adopt notification requirements for health care providers on the grounds that the Board does not have adequate authority. The letter would also explain that some of the other requests are outside the Board's scope and capacity. The letter would reflect any guidance from today's meeting about whether the Board should advocate on this issue, and copies of the response would go to agencies that might have authority to act on some of her other requests.

### **Board Action Recommended**

The Board may choose to consider, amend if necessary, and adopt the following motion:

***Motion: The Board directs the executive director to initiate rule making, in conjunction with Department of Health, by filing a CR-101 for the purpose of developing statewide standards for devices marketed for the rehabilitation of on-site sewage systems. The Department of Health is asked to recommend rule language that would apply to all types of remediation technologies for on-site sewage systems marketed in Washington State.***